BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SONIA P. CAZARES	)	
Claimant	)	
VS.	)	
	)	Docket No. 245,972
STATE OF KANSAS	)	
Respondent	)	
AND	)	
	)	
STATE SELF INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Claimant appeals from a preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Brad E. Avery on December 30, 1999.

ISSUES

The ALJ denied benefits based on the finding that there was "insufficient proof that claimant's accidental injury arose out of and in the course of employment." Judge Avery also found written claim was not timely. In so finding, he determined the alleged incident report did not constitute written claim. Claimant requests review of those findings. Respondent, in its brief, raises the additional issue of "whether the claimant is entitled to additional medical treatment." This appears to be an issue of whether claimant's current condition and need for medical treatment are a direct result of the work related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the briefs of the parties, the Appeals Board concludes, for the reasons stated below, that the ALJ's Order Denying Medical Treatment should be affirmed.

The issues raised on appeal, whether claimant's accidental injury arose out of and in the course of employment and whether claimant made timely written claim, are jurisdictional issues subject to review by the Appeals Board. K.S.A. 1999 Supp. 44-534a; K.S.A. 1999 Supp. 44-551.

Respondent admits claimant was injured at work on March 8, 1997 while emptying water from a bucket. She was sent by respondent to the Newman Memorial County Hospital emergency room where she complained of pain in her low back and right leg. Respondent

also provided claimant subsequent treatment with her personal physician, H. Russel Bradley, M.D., and paid temporary total disability compensation.

Claimant testified that she filled out an accident report form and later delivered a work restriction slip from Dr. Bradley to her employer. Claimant argues that by doing so she was making a claim for workers compensation and that she had completed the requirements necessary to seek workers compensation benefits. Respondent denies receiving an accident report form or any other writing that would constitute a written claim for compensation. The Board agrees that a slip from a physician containing his medical restrictions and/or a release for claimant to return to work does not necessarily constitute a written claim. Under certain circumstances, however, an off work slip from a physician could constitute a written claim if given for the purpose of receiving temporary total disability compensation. Claimant testified that she gave respondent restrictions from Dr. Bradley "In order for them to know that I had restrictions if they wanted me to stay at work or not." As a result of the restrictions on that slip she received temporary total disability benefits.

The respondent authorized Dr. Bradley to treat claimant. Dr. Bradley's records show claimant was treated for a workers compensation injury. He treated claimant through April 8, 1997, and then released claimant to full duty. Claimant did not seek any further treatment and did not submit anything else which might be considered a written claim until her Application for Hearing was served in August 1999, far more than 200 days after the last compensation (medical treatment) was provided. Therefore, if the documents delivered in March 1997 do not constitute a claim, then claimant has not made a timely written claim as required by K.S.A. 44-520a.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it. Craig v. Electrolux Corporation, 212 Kan. 75, 82, 510 P.2d 138 (1973). The same purpose or function has, of course, been ascribed to requirement for notice found in K.S.A. 44-520. Pike v. Gas Service Co., 223 Kan. 408, 573 P.2d 1055 (1978). Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In Fitzwater v. Boeing Airplane Co., 181 Kan. 158, 166, 309 P.2d 681 (1957), the Kansas Supreme Court described the test as follows:

> In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The form claimant submitted to respondent in March 1997 is not in evidence, but claimant testified it contained a description of the accident and injury. Certainly it satisfied the purpose of allowing respondent the opportunity to investigate. Whether the claimant intended by this form to ask for compensation is a more difficult question. The Board concludes,

however, that claimant did intend to be asking for compensation. It appears that when claimant completed the paperwork for respondent, she believed she was doing so for the purpose of obtaining medical treatment under workers compensation. That she would think so is not surprising in light of the fact she, at the same time, was being referred for the workers compensation benefit of medical treatment. Thus, she did in fact receive medical treatment from respondent as a result of completing that report form and later also received temporary total disability compensation as a result of delivering to respondent the medical restrictions slip from Dr. Bradley.

The Appeals Board, therefore, concludes the accident report claimant completed in March 1997 should be treated as a written claim and written claim was, therefore, timely.

Respondent admits claimant sustained personal injury by accident that arose out of and in the course of her employment on March 8, 1997. Respondent denies, however, that claimant's current condition for which she seeks medical treatment is a direct result of her work related injury. Claimant was released without restrictions on April 8, 1997. She returned to her regular job duties with respondent and worked for approximately one and one-half years without reporting low back complaints or seeking additional medical treatment. Likewise, when she quit working for respondent on October 23, 1998, she did not mention her back being painful or give that as a reason for her termination. Thereafter, claimant worked as a teachers aide during the 1998-1999 school year. In August 1999 she began working for Hopkins Manufacturing on an assembly line. That job involved repetitive work including frequent lifting of boxes weighing up to twenty pounds each. On October 4, 1999 she sent a seven day demand letter to respondent requesting additional medical treatment per the recommendations of Dr. Pedro Murati, whom claimant saw on September 9, 1999, at the request of her attorney. Based upon this record, claimant has not proven her current condition is the direct and probable result of her March 8, 1997 accident. Medical benefits, therefore, were properly denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant met with personal injury by accident that arose out of and in the course of her employment with respondent and timely written claim was made, but because claimant has failed to prove that her present condition is the direct result of her work-related injury the preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Brad E. Avery on December 30, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS

Marcia L. Yates, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director